[G.R. No. 192006, November 14, 2018]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, MINDANAO I GEOTHERMAL PARTNERSHIP, RESPONDENT.

DECISION

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated January 6, 2010, and the Resolution[3] dated April 15, 2010 of the Court of Tax Appeals (CTA) *en banc,* in CTA E.B. No. 459, which affirmed the Amended Decision[4] dated September 23, 2008 of the CTA's First Division in CTA Case No. 6788 in a claim for the issuance of a certificate of tax credit for unutilized excess input value-added tax (VAT) filed by Mindanao I Geothermal Partnership (M1).

The Facts

M1 is a duly registered Philippine partnership which is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer in the business of generation, collection, and distribution of electricity, steam, and hot water supply.[5]

Sometime in December 1994, M1 entered into a build-operate-transfer contract with the Philippine National Oil Corporation-Energy Development Corporation (PNOC-EDC) for the finance, design, construction, testing, commissioning, operation, maintenance, and repair of a 47-megawatt geothermal plant. Under the contract, PNOC-EDC shall supply and deliver steam to M1, who shall then convert the steam into electric power and supply such power to the National Power Corporation for and in behalf of PNOC-EDC. M1's geothermal power plant project has been accredited by the Department of Energy as a Private Sector Generation Facility pursuant to the provisions of Executive Order No. 215.[6]

On June 26, 2001, Republic Act No. 9136, or the Electric Power Industry Reform Act (EPIRA) took effect. It amended the National Internal Revenue Code (NIRC) to make the delivery and supply of electric power by generation companies VAT zero-rated. Pursuant to said law, M1 adopted VAT zero-rating in the computation of its VAT payable in the course of filing its VAT returns, on the belief that its sales qualify for VAT zero-rating. Subsequently, M1 filed its VAT returns for the third and fourth quarters of taxable year 2001 on October 24, 2001, and January 24, 2002, respectively, declaring accumulated unutilized excess input VAT in the amount of Php 4,417,437.97 as of the fourth quarter of taxable year 2001, which it attributed to its zero-rated sales to PNOC-EDC for the same period.[7]

On June 24, 2002, M1 filed with the BIR an administrative claim for the issuance of a tax credit certificate in the amount of Php 4,417,437.97, corresponding to its claimed unutilized excess input VAT as of the fourth quarter of 2001.[8]

On September 30, 2003, after the BIR's alleged inaction, M1 elevated its claim to the CTA through a petition for review. The BIR, represented by respondent Commissioner of Internal Revenue (CIR), filed its answer on November 17, 2003. The case then proceeded to trial on the merits and was submitted for decision on July 19, 2005, without memorandum from the BIR.[9]

On October 13, 2005, the CTA First Division rendered a Decision[10] in the case. M1's petition was denied for failure to submit Certificates of Creditable Tax Withheld at Source and machine-validated Monthly VAT Declarations for the months of July and August 2001. The tax court in division held that without these documents, the VAT payments cannot be applied against M1's output VAT liability. Hence, there would be no excess VAT to refund.[11]

On November 17, 2005, M1 filed a motion for new trial, claiming that the non-submission of the aforesaid documents was based on the recommendation of the independent certified public accountant (CPA) commissioned by the CTA. The motion was granted[12] and M1 included the documents in its Supplemental Offer of Documentary Evidence.[13]

On September 23, 2008, the CTA First Division rendered an Amended Decision[14] ordering the BIR to issue a Tax Credit Certificate in favor of M1 in the amount of Php 4,067,876.53, representing unutilized input VAT incurred for the third and fourth quarters of taxable year 2001.

The tax court in division admitted the Certificates of Creditable Withheld at Source and the machine-validated Monthly VAT Declarations showing VAT payment which was submitted by M1. To determine if M1 applied its excess input tax credits for taxable year 2001 against its output VAT in the succeeding quarters of taxable years 2002 and 2003, the CTA First Division took judicial notice of M1's Quarterly VAT Returns for the last three quarters of 2002 and first two quarters of 2003, which were attached to M1's petitions for review in three other cases pending with the tax court.[15]

The BIR moved for reconsideration, which was denied. Thus, on February 25, 2009, after its motion for extension was granted by the tax court, BIR filed a Petition for Review before the CTA *en banc* to assail the Amended Decision.

On January 6, 2010, in its Decision,[16] the CTA *en banc,* by a 4-2 vote, affirmed the CTA First Division's ruling. The CTA *en banc* upheld the grant of M1's motion for new trial, ruling that the finding of mistake on M1's part was well-taken, given M1's mistaken but *bonafide* reliance on the report of the court-commissioned CPA. The tax court also sustained its First Division's taking judicial notice of M1's Quarterly VAT Returns which were found in the records of M1's other pending cases with the CTA. The dissenting Justices were of the opinion that the CTA First Division cannot properly take judicial notice of the Quarterly VAT Returns found in M1's other pending cases.[17]

The BIR filed a motion for reconsideration which raised *inter alia,* for the first time, the issue of whether or not M1's claim was timely filed. However, the CTA denied the motion through a Resolution[18] dated April 15, 2010, holding that the issue was a

matter of prescription, which cannot be raised for the first time on appeal or on reconsideration.

On June 2, 2010, the BIR, represented by its Commissioner, filed a Petition for Review on *Certiorari* with this Court, which was docketed as G.R. No. 192006. On September 23, 2010, M1 filed its Comment on the Petition.[19] On February 18, 2011, the CIR filed his Reply.[20] The Court, in a Resolution[21] dated March 23, 2011, granted M1's motion to admit rejoinder and noted the attached Rejoinder.

The Issues

The CIR raises the following issues for resolution:

1. Whether or not the CTA erred in taking judicial notice of the quarterly VAT returns filed by M1 in other cases before the CTA;
2. Whether or not the BIR was denied due process when the CTA took judicial notice of the quarterly VAT returns filed by M1 in other cases before the CTA without a hearing;
3. Whether or not CTA erred in granting M1's motion for new trial; and
4. Whether or not the First Division of the CTA had jurisdiction to entertain M1's claim for a tax credit certificate.

On the issue regarding the propriety of judicial notice, the CIR asserts that the VAT returns attached to the records of M1's other pending cases can be the subject of neither mandatory nor discretionary judicial notice because the statements therein are still disputable, hence at the very least, the CTA should have conducted a hearing on the matter; while M1 contends that the matter was one which the tax court could acquire knowledge of by virtue of its judicial functions, and that the current action is so intimately related to the other three actions where the Quarterly VAT Returns were filed, such that the tax court ban take judicial notice of the returns.

On the issue of the propriety of the grant of M1's motion for new trial, the CIR asserts that M1's ratiocination for the non-submission of the Certificates of Creditable Withheld at Source and the machine-validated Monthly VAT Declarations does not constitute mistake or excusable negligence sufficient for the grant of a new trial, and that the documents are not newly-discovered evidence but actually "forgotten evidence". M1 on the other hand asserts that its reliance on the court-commissioned accountant was "misplaced confidence" amounting to a mistake which would justify the grant of a new trial. M1 also notes that when it moved for a new trial, the BIR did not object at the first instance.

Finally, as regards the issue of the CTA's jurisdiction over the claim, the CIR asserts that the judicial claim for tax credit was filed out of time. According to the,taxman, under Section 112(C) of the NIRC, as amended, it had until October 22, 2002, or 120 days from the date of filing of M1's administrative claim for refund, to act upon the claim, failing which M1 only had until November 21, 2002, or 30 days-from the lapse of the 120-day period, to file a judicial claim before the CTA. Therefore, M1's

claim, which was filed on September 30, 2003, was filed after the jurisdictional period had lapsed. M1 counters that the BIR is estopped from raising the issue of jurisdiction, having raised it for the first time on reconsideration before the CTA *en banc.* It also argues that the *CIR v. Aichi Forging Company of Asia, Inc.*[22] ruling should not be applied retroactively; and that *pre-Aichi* rulings of the CTA treating the 120+30-day period under Section 112(D) as merely permissive, should be applied in this case.

Ruling of the Court

The petition is meritorious.

The Court begins by discussing the threshold issue of the tax court's jurisdiction to entertain M1's claim for tax credit. The applicable law is Section 112 of the NIRC,[23] which establishes the procedural and temporal parameters for the claim of excess input VAT refunds. The provision states in part:

> SEC. 112. *Refunds or Tax Credits of Input Tax. —*
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> (A) *Zero-rated or Effectively Zero-rated Sales. —* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.
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> (D) *Period Within Which Refund or Tax Credit of Input Taxes Shall be Made. —* In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) and (B) hereof.
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> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or

after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

The precise mandate of these provisions has been the subject of many Supreme Court decisions such as the *Atlas Consolidated Mining and Dev't. Corp. v. CIR,*[24] CIR v. Mirant Pagbilao Corp.,[25] and *CIR v. San Roque Power Corp.*[26] cases. The jurisprudence interpreting Section 112 was further summarized by the Court in *Silicon Philippines, Inc. v. CIR:*[27]

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. *(Aichi)*
2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. *(San Roque)*
3. The only other rule is the *Atlas* ruling, which applied only from 8 June 2007 to 12 September 2008. *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax. *(San Roque)*

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. *(Aichi* and *San Roque)*
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5 October 2010, when BIR Ruling No. DA-489-03 was still in force. *(San Roque)*
5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. *(San Roque)*[28]

M1 asks this Court not to apply the *Aichi* ruling to the case at bar since the administrative and judicial claims at issue were filed before the promulgation of *Aichi.* It further asks this Court to sanction *pre-Aichi* interpretations of Section 112(C), citing rulings of the CTA and the Court's ruling in *San Carlos Milling Co., Inc.*